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STATE FOR EB/TPP/MTA/MST AND WHA/CEN  
PLEASE PASS TO USTR FOR GBLUE  
GUATEMALA FOR COMATT MLARSEN AND AGATT SHUETE  
SAN SALVADOR FOR DTHOMPSON

E.O. 12958: N/A  
TAGS: ETRD ECON EFIN HO  
SUBJECT: HONDURAS NATIONAL TRADE ESTIMATE REPORT 2004

REF: SECSTATE 310954

¶11. The text of the 2004 National Trade Estimate report for Honduras follows.

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TRADE SUMMARY  
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¶12. (Note that the following paragraph is to be updated by Washington with USDOC statistics.) In 2002, the U.S. trade deficit with Honduras was \$699 million, an increase of \$10 million (1.5 percent) from the U.S. trade deficit of \$689 million in 2001. U.S. goods exports to Honduras were \$2.6 billion, an increase of \$128 million (5.3 percent) from the level of U.S. exports to Honduras in 2001. Corresponding U.S. imports from Honduras were \$3.3 billion in 2002, an increase of \$138 million (4.4 percent) from the level of imports in 2001. Honduras is currently the United States' 35th largest export market.

¶13. (We understand that this paragraph will also be updated with USDOC statistics.) The stock of U.S. foreign direct investment (FDI) in Honduras in 2001 amounted to \$249 million, down from \$257 million in 2000. U.S. FDI is concentrated largely in the manufacturing sector.

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(A) IMPORT POLICIES  
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¶14. In 1995, Honduras and other members of the Central American Common Market (CACM) agreed to reduce and harmonize the common external tariff (CET) at zero to 15 percent, but allowed each member to determine the timing of the reductions. In 2002, Honduras lifted tariffs on capital goods and raw materials (including those used for manufacture of pharmaceutical products and agricultural inputs) for those imports produced outside of the CACM. Additionally, tariffs on most non-CACM intermediate goods were reduced to 10 percent, and final goods were reduced to 15 percent. Per the tax reform law of 2002, import tariffs on cars were reduced from 40 percent to 15 percent ad valorem, and a tariff based on engine size was eliminated.

¶15. Partially in response to remaining differences in Central American external tariffs, in October 2003 the GOH increased tariffs on thirty specific dairy products, including milk and powdered milk, sour cream, yogurt, some cheeses, butter, and ice cream. For most of the products, the tariff was raised from 15 percent to 35 percent, the maximum allowable tariff rate under Honduras' WTO commitments.

¶16. Honduras implements a price band mechanism for imports of yellow corn, sorghum, and corn meal. This price band is calculated from a time series of international prices on a given product for the prior 60 months. The 15 highest and lowest monthly prices are eliminated, with the remaining highs and lows establishing the price band. Imports entering with values within the defined band are assessed a 20 percent tariff. Imports entering with prices above the band are assessed duties at a rate lower than 20 percent, according to a predetermined schedule; those imports priced below the band are assessed a tariff higher than 20 percent. The government also maintains a seasonal restriction on the price band. From September to January the minimum allowable duty is 20 percent for corn and 15 percent for cornmeal and sorghum. From February to August, duties are allowed to fluctuate according to the predetermined duty tables for each commodity. This seasonal restriction has been added to provide additional protection to local grain farmers during the main harvest season.

¶17. In addition to the above, the Government of Honduras, farm groups, and importers have agreed to a quasi-tariff-rate quota in which the price band remains in effect until local grain supplies are exhausted, after which a one percent duty is applied to imports. A similar quasi-tariff-rate quota system is in place for imports of rice. The United States has strongly opposed the Honduran policies on these grains as limiting access for U.S. agricultural products, and revision or elimination of the system is a possible outcome of the U.S.-Central American Free Trade Agreement (CAFTA), currently under negotiation.

¶ 8. Honduras implemented the WTO Customs Valuation Agreement in February 2000. WTO records show that Honduras has not yet notified its legislation nor the Customs Valuation Checklist to the WTO Committee on Customs Valuation.

¶ 9. Under the tax reform law of June 2002, cars older than seven years and passenger buses older than ten years are not allowed to enter Honduras, with the exception of ambulances.

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(B) STANDARDS, TESTING, LABELING AND CERTIFICATION  
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¶ 10. Honduras maintains a ban on some U.S. raw poultry imports, based on sanitary and phyto-sanitary concerns. Local importers charge that Honduran officials are using these sanitary and phyto-sanitary measures to block U.S. imports to protect local producers and, in some cases, to promote diversion of trade to other Central American countries. USDA FAS estimates that if Honduran restrictions on U.S. raw poultry and poultry parts were lifted, U.S. producers could export an additional \$10 million of poultry products to Honduras, annually.

¶ 11. The Honduran government has also cited sanitary and phyto-sanitary concerns in periodically denying applications for the importation of pork and dairy products. Application of sanitary and phyto-sanitary requirements is lacking in transparency, and changes in sanitary and phyto-sanitary requirements are seldom reported to the WTO as required. This results in uncertainty among U.S. suppliers and Honduran importers. In both 2002 and 2003, Honduran importers had initial difficulty in receiving permission to import turkey into Honduras, though in each year permission was eventually granted. Administration of sanitary and phyto-sanitary systems is under discussion in the CAFTA negotiations.

¶ 12. The Honduran government requires that sanitary permits be obtained for all imported foodstuffs. These permits are granted by the Ministry of Health. During 2003, a U.S. supermarket chain complained that delays in the process of granting these permits were hampering the company's ability to import its products into Honduras. The Ministry of Health agreed to accelerate the process by focusing most closely on products considered to be at high risk for sanitary concerns (such as raw meat) and simplifying the procedures for low-risk products.

¶ 13. Labeling requirements for food products are very specific. Honduran law requires that all processed food products be labeled in Spanish and registered with the Division of Food Control (DFC) of the Ministry of Public Health. In general, labels of all consumer-oriented products are required to include the following basic information: name of the product, name of the manufacturer, country of origin, sales price, expiration date, content, list of ingredients and any applicable health warnings.

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(C) GOVERNMENT PROCUREMENT  
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¶ 14. Under the Government Contracting Law which entered into force in October 2001, all public works contracts over one million lempiras (\$55,690) must be offered through public competitive bidding. Public contracts between 500,000 and one million lempiras (\$27,845 and \$55,690) can be offered through a private bid, and contracts less than 500,000 lempiras (\$27,845) are exempt from the bidding process. To participate in public tenders, foreign firms are required to act through a local agent. Local agency firms must be at least 51 percent Honduran-owned, unless the procurement is linked to a national emergency. Government purchases and project acquisitions are generally exempted from import duties.

¶ 15. While foreign firms are granted national treatment for public bids, some still complain of mismanagement and lack of transparency in the bid processes. The GOH has tried to improve transparency and fairness in government procurement by hiring the United Nations Development Program (UNDP) to manage procurement for an increasing number of ministries and state-owned entities.

¶ 16. Honduras is not a signatory of the WTO Government Procurement Agreement. In the past, the United States has raised concerns regarding Honduras' lack of cooperation in the WTO Working Party on Transparency in Government Procurement. In recognition of increased cooperation in the WTO Working Party on Transparency in Government Procurement, the United States reinstated a waiver of "Buy America Act" provisions in 2002, which had previously been suspended for Honduras.

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(D) EXPORT SUBSIDIES  
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¶ 17. Honduras does not have export subsidies or export-promotion schemes other than the tax exemptions given to firms in free trade zones. A company located in a free trade zone, industrial park or export processing zone is exempt from paying import

duties on goods and capital equipment, charges, surcharges, selective consumption taxes, and sales taxes. In addition, the production and sale of goods within these areas are exempt from Honduran municipal taxes for 10 years, and from federal taxes for 20 years.

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(E) LACK OF INTELLECTUAL PROPERTY PROTECTION

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¶18. Honduras has largely complied with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), through legal revisions enacted in December 1999. To be in full TRIPs compliance, the Honduran Congress must still pass laws governing the design of integrated circuits and plant variety protection. Current expectations are that no action will be taken on these two laws until early 2004, but that the laws will then be included in a larger bill that is likely to be approved without controversy.

¶19. Honduras became a member of the World Intellectual Property Organization (WIPO) in 1983. Honduras and the U.S. initiated a Bilateral Intellectual Property Rights (IPR) Agreement in March 1999, but both parties decided to fold the provisions into CAFTA, currently under negotiation. Honduras became party to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT) in May 2002.

Copyrights

¶20. Honduras' copyright law, updated in 1999, added more than twenty different criminal offenses related to copyright infringement and established fines and suspension of services that can be levied against offenders. However, the piracy of books, sound and video recordings, compact discs, and computer software is still widespread in Honduras, due in part to limited enforcement capacity. U.S. companies are concerned that recent attempts to prosecute computer software infringement cases have been met with resistance by officials in the Ministry of Industry and Trade's IPR Division and the Attorney General's office.

¶21. U.S. software companies are currently focusing on legalization of pirated software used in some ministries and state-owned entities. A major U.S. software company estimates that it loses \$5 million annually due to software piracy in Honduras.

Patents and Trademarks

¶22. Honduras ratified the Paris Convention for the Protection of Industrial Property in 1994. The Honduran Congress enacted a 1999 Law of Industrial Property to provide improved protection for both trademarks and patents. To be protected under Honduran law, patents and trademarks must be registered with the Ministry of Industry and Trade.

¶23. Recent modifications to the Patent Law of 1993 include patent protection for pharmaceuticals, and extend the term of protection for a patent from seventeen to twenty years from the date of filing to meet WTO standards. The term for cancellation of a trademark for lack of use has been extended from one year to three years. Trademarks are valid for up to ten years from the registration date. The illegitimate registration of well-known trademarks has, however, been a persistent problem in Honduras.

¶24. In 2002, a U.S. pharmaceutical company complained that the Ministry of Health, in approving a competing company's pharmaceutical product, did not respect their data exclusivity rights as guaranteed under article 39 of the WTO TRIPs agreement and article 77 of Honduras' Industrial Property Law. (Honduran law provides five-year exclusive use of data provided in support of registering pharmaceutical products.) The Ministry of Health approved the competing pharmaceutical product despite communication from Honduras' IPR Division that the U.S. company's research and data were protected under Honduran law. The U.S. company argues that in order for the competing product to be legally registered with the Ministry of Health, the company needs to provide the research and data to support their application. When a similar situation arose with a separate application in 2003, the Ministry of Health recognized that the competing company's product was a copy of the U.S. company's protected product, and did not approve the competing company's application. However, the GOH's uneven history in protection of intellectual property rights leads to uncertainty for U.S. investors.

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(F) SERVICES BARRIERS

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¶25. Special government authorization must be obtained to invest in the tourism, hotel and banking services sectors. Foreigners may not hold a seat in Honduras' two stock exchanges or provide direct brokerage services in these exchanges. Honduran professional bodies heavily regulate the licensing of foreigners to practice law, medicine, engineering, accounting, and other professions.

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(G) INVESTMENT BARRIERS

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¶26. The Constitution of Honduras requires that all foreign investment complement, but not substitute for, national investment. Companies that wish to take advantage of the Agrarian Reform Law, engage in commercial fishing, forestry, or local transportation activities, serve as representatives, agents, or distributors for foreign companies, or operate radio and television stations must be majority-owned by Hondurans. Government authorization is required for both foreign and domestic investors in basic health services, telecommunications, generation, transmission, and distribution of electricity, air transport, and mining.

¶27. In addition, special government authorization is required for foreign investment in the following sectors: forestry, telecommunications, basic health, air transport, fishing and aquaculture, mining, insurance and financial services, private education, and those agricultural and agro-industrial activities exceeding land tenancy limits established by law.

¶28. Small-scale commercial and industrial activities with an investment less than 150,000 lempiras (about \$8,353), excluding land, buildings, and vehicles, are reserved exclusively for Honduran nationals. For all investments, at least 90 percent of a company's labor force must be Honduran, and at least 80 percent of the payroll must be paid to Hondurans.

¶29. Foreign ownership of land within 40 km of the coastlines and national boundaries is constitutionally prohibited, though tourism investment laws allow for certain exceptions. Inadequate land title procedures have led to numerous investment disputes involving U.S.-citizen landowners.

¶30. In 2001, a Bilateral Investment Treaty (BIT) between the U.S. and Honduras entered into force. The treaty provides for equal protection under the law for U.S. investors in Honduras and permits expropriation only in accordance with international legal standards and accompanied by adequate compensation. U.S. investors in Honduras also have the right to submit an investment dispute to binding international arbitration.

¶31. Honduras has taken the following limited exceptions to its BIT national treatment obligation: properties on cays, reefs, rocks, shoals or sandbanks or on islands or on any property located within 40 km of the coastline or land borders of Honduras, small scale industry and commerce with total invested capital of no more than \$40,000 or its equivalent in national currency, ownership, operation and editorial control of broadcast radio and television, ownership, operation and editorial control of general interest periodicals and newspapers published in Honduras.

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(H) LACK OF GOVERNMENT ACTION AGAINST ANTI-COMPETITIVE PRACTICES OF STATE-OWNED AND PRIVATE FIRMS THAT RESTRICT THE SALE OF U.S. PRODUCTS AND SERVICES

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¶32. U.S. companies occasionally encounter anti-competitive practices by private firms, especially in the case of large investments in sectors with one or two national players. The GOH hopes to address these problems more systematically with the drafting and approval in 2004 of a Competition Law. The World Bank is assisting with this project.

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(I) TRADE RESTRICTIONS AFFECTING ELECTRONIC COMMERCE

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¶33. There is currently no domestic legislation concerning electronic commerce in Honduras. The Electronic Commerce System Directorate (DISELCO), a project of the Chamber of Commerce and Industry of Tegucigalpa (CCIT), the Chamber of Commerce and Industry of Cortes (CCIC) and the National Industry Association (ANDI), is the institution in charge of establishing the policies and norms pertaining to electronic commerce in Honduras.

¶34. Electronic commerce is still not developed in the Honduran market. Although improving, the country still lacks adequate basic telecom infrastructure and internet bandwidth capacity to effectively support significant electronic commerce at the present time. Except for web page promotional material, companies are not yet utilizing computer sales as an additional distribution channel in Honduras. Twenty-five private ISPs compete for an estimated 30,000 Internet users. Internet dial-up fees are fairly significant, and comparable to those in other Central American countries.

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(J) OTHER BARRIERS

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¶35. Historically, U.S. firms and private citizens have found corruption to be a problem which seriously complicates doing

business in Honduras, and thus a constraint on foreign direct investment. Corruption appears to be most pervasive in the following areas: government procurement, performance requirements, the regulatory system, and the buying and selling of real estate, particularly land title transfers. Honduras' judicial system is easily influenced; investment and business disputes involving foreigners have rarely been resolved in a transparent manner. The administration of justice is a key challenge to domestic and foreign companies. With considerable U.S. help, the government is reforming Honduras' judicial system and fighting corruption, though serious problems remain in these areas.

Palmer